

California Organic Retail Practices



California Department
of
Food and Agriculture

It is important that these terms be understood to follow the text of this document as well as the National Organic Standards (NOS) regulations. When the NOS provided a definition that definition is use as extracted from 7 CFR Part 205 National Organic Program, Final Rule. All the definitions below with a reference number are from the regulations, in the absence of a technical definition the text of the NOS implies the definition.

Audit trail: (205.2) Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled according to the NOS.

Bulk: (205.2) The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to determine the individual pieces, amount, or volume of the product purchased.

Certification or certified: (205.2) A determination made by a certifying agent that a production or handling operation is in compliance with the Act and regulations in this part, which is documented by a certificate of organic operation.

Certification voluntary: Any operation that is exempt or excluded may choose to become certified for marketing reasons. Any operation which does not use the word “organic” in any manner on the front panel is excluded from certification.

Certification prohibited: An operation that sells a multi-ingredient product that contains less than 70% organic ingredients may not be certified for that product.

Certified operations: (205.2) A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulation in this part.

Claims: (205.2) Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public of buyers of agricultural products that relate to the organic certification process or the term ...(organic as prescribed in part 205.)

Commingling: (205.2) Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, processing, transportation, storage or handling, other than during the manufacture of multiingredient product containing both types of ingredients.

COPA: The California Organic Products Act of 2003 is the legislation passed in 2002 that changed the California laws to conform to the NOS. It provided authority for CDFA and DHS to register operations in California that sell organic products or products that contain any percentage of organic ingredients

Exempt producer/handler: A producer that sells no more than \$5,000.00 of product as organic is exempt from certification. However they are subject to parts of the NOS rule and in California they must register as an organic producer. Retail stores can purchase product from an exempt producer and market that product as organic. The product

cannot be represented as certified nor can the product be used by the retail operation for processing or repackaging as organic.

Exempt retail operation: 205.101 (2) says “A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.” Meaning, sell the product in the same container/package it came in or sell it in bulk.

Exempt processor/handler: (less than 70% organic ingredients) 205.101 (a) (3) says “A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except....” The NOS requires this operation to provide for prevention from commingling and must be labeled to the NOS and must provide records to support the claims made.

Excluded handler: (distribution center, wholesale distributor; temporary storage facility) A handling operation that only handles product which is enclosed in a container prior to receiving and remains in that container are excluded from being certified but must comply with parts of the NOS.

Excluded retail operation: No legal definition; but, when an exempted retail operation processes as defined by the NOS, the exemption is lost and the store is now excluded from certification but must comply with certain parts of the NOS and COPA. Each excluded retail operation in California must register with either CDFA or DHS. See non exempt retail operation below.

NOS: The National Organic Standards which are the regulations codified in 7 CFR part 205

NOP: The National Organic Program depending on usage in this document could mean the national legislation, regulation, or the USDA staff administering the program.

Non-exempt/excluded retail operation: A retail operation that processes organic product at one location and then, either wholesales that product as organic or transports that product to another location for sale, must be certified.

Handle: (205.2) To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

Handler: (205.2) Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

Handling operation: (205.2) Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives

or otherwise acquires agricultural products and processes, packages, or stores such products.

Label: (205.2) A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

Labeling: (205.2) All written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product display at retail stores about the product.

Market information: (205.2) Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, distributed, broadcast, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

Nonretail container: (205.2) any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.

Organic integrity: The ability to document through an audit trail the way a product was produced and handled and the ability to prevent the product from being commingled or coming in contact with a prohibited substance or contaminated surface.

Principal display panel: (205.2) That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

Processing: (205.2) Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

Retail Food Establishment: (205.2) A restaurant, delicatessen, bakery, grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service for processed or prepared raw and ready-to-eat-food.

Introduction

All organic products sold in the U.S. must comply with the Organic Food Production Act of 1990 (the Act) and the regulations adopted for implementation in the Code of Federal Regulations Section 7 CFR Part 205. Operations selling organic products in California must also comply with the California Organic Products Act of 2003 (COPA), which will be effective January 1, 2003.

COPA laws are the same as the NOS with the exception that COPA requires all operations selling product as organic to register either with CDFA or DHS, depending on the activities of the operation.

The State of California will become an approved State Organic Program (SOP), and, thus, the National Organic Program (NOP) for California operations will be the SOP of California. The State will be responsible for monitoring the administration of the NOP in California.

Only certain sections of the NOP and COPA apply to retail operations. The purpose of the California Organic Retail Practices (CORP) is to provide retail operations with the necessary information to be in compliance with the law.

The NOS and COPA have established specific unlawful acts as well as general compliance laws. In California the operation in possession of the product may receive a notice of noncompliance (NNC) for violations from which they are responsible as well as violations that were the responsibility of the manufacturer. In most instances the retail operation would not receive an adverse action for violations of the manufacturer. When a retail operation receives a NNC for another operation's product, the responsibility of the retail operation ends when they have notified the other operation of the violation. The State will settle the NNC issue with the manufacturer. However, there may be times the retail store will be required to post the correct information at the point of sale or remove the product from sale. The enforcement officer will work with the retail operation on the proper corrective action. Violators are subject to penalties of up to \$10,000 per violation.

Maintaining organic integrity:

Organic retailers should adhere to standards that maintain the integrity of organic agricultural products. They are the last link between the producer and the consumer. Prevention of contaminants at the retail level ensures the public that proper steps have been taken to promote the highest level of organic food integrity. Maintaining integrity requires three things: 1) Maintaining the audit trail to identify the product; 2) Maintaining the identity of the product such as labeling of bins, packages, tubs or any container which organic product may be stored; and 3) Preventing the product from being contaminated from commingling with non-organic product, or coming in contact with prohibited substances.

Maintaining audit trail:

“Maintaining audit trail” consists of any document that will show where a specific lot of organic products have traveled. Some examples of the types of documents are: Harvest tags, truck weight tags, picking slips, receiving tags, storage bin tags, order forms, transfer tags, bills of lading, invoices, or any other document that may show where and how a product was handled.

Maintaining identity/labeling:

There should always be a process by which the organic product is identified. If only organic product is on the premises, it may not be necessary to label or tag each container as to its ingredients. When there is both organic and non-organic, then separate by either colored bins/tubs to distinguish between the two or by labels or tags on each container. Do not sell or label a product as “organic” if you know it does not meet the Act’s requirements. The civil penalty for doing so is up to \$10,000 per violation. The Act does not require retailers to investigate suppliers to ensure that products labeled “organic” comply with the law. Retailers are not subject to penalties if they sell an organic product — even a private label item — that is later found to be mislabeled, unless the retailer knew the product was mislabeled.

Labeling Rules

Retailers that process organic foods on the premises (“excluded” operations) must comply with the following regulations for products labeled “organic” at retail: COPA requires exempt retailers that handle, but do not process, organic foods to also follow these rules. The regulations define four categories of organic products:

- “100% Organic” — Raw or processed agricultural products that contain 100 percent organic ingredients.
- “Organic” — Agricultural products that contain not less than 95 percent organic ingredients.
- “Made with [organic ingredients]” — Multi-ingredient products that contain at least 70 percent organically produced ingredients.
- “Less than 70 percent organic ingredients” — Multi-ingredient products that contain less than 70 percent organically produced ingredients. See the attached chart for quick reference.

Preventing contamination/commingling:

Do not allow unpackaged organic products to contact unpackaged conventional product. The NOS does not prescribe exactly how to prevent commingling and contamination. The following are suggestions you may adapt to your retail locations. Physical barriers between bins may be used in display areas to prevent commingling. A space between organic and conventional products may also be sufficient. Placing packaged conventional product next to organic product may be used. In storage areas, separate pallets are not required but may assist in maintaining organic integrity. For packaged products, the barriers provided by the boxes should be sufficient if separate pallets are not possible. A totally separate area is good, but if not available, reasonable precautions should be sufficient.

Always keep in mind that previously used boxes and containers may have prohibited chemicals or substances on or in them. Do not use packaging materials, storage containers, or bins that contain prohibited substances. Use clean water or a permitted cleanser to thoroughly rinse any container that previously held conventional products or any surface that might compromise the integrity of an organic product before using them for organic products.

Do not display conventional products above organically produced products in wet sets. Do not add prohibited substances to produce sprays or misting systems that will be used on organic produce.

Eliminate pest habitat first, and then use pest control devices and chemicals in a manner so they will not come into contact with surfaces that come into contact with organic products.

The NOS provides a 'USDA Organic' seal to be used by certified operations only. The USDA seal may only be used on products that have at least 95% organic ingredients. Only operations that have been certified may use the seal in a manner to imply the operation is certified.

An exempt retail operation may only represent product to the consumer in the same manner the shipper represented it to the store. The excluded retail operation may process certified organic products, but once processed by the store, the finished product has lost its ability to be referred to as "certified organic" and may only be labeled as organic. The NOS provides for labeling products that are "organic" and those that are "certified organic." A product may be identified as "certified organic" only if all the facilities that processed the product are certified.

Agricultural products, whether raw or processed, that are sold at retail unpackaged and in bulk bins or produce displays, may provide the same information to consumers as was provided on the original container or shipping documents (e.g., labels, signs, or placards). All the labeling provisions must be followed by the excluded and exempt retail operations as defined in the NOS.

Compliance with the California Organic Products Act of 2003:

The NOP basically is a certification program and while it does allow enforcement of violations of the NOS there is not a provision for funding a proactive enforcement program. Since 1992 the State of California has been providing enforcement and oversight to the organic industry. That program was made to conform to the NOP and the State will continue to provide oversight to the organic industry.

COPA requires any retail operation which meets the definitions of “excluded retail operation” to register with either CDFA or DHS. Any retail store that processes or encloses product in a consumer package is an “excluded” retail operation.” There may be a few retail operations that would register with both agencies.

A retail operation, which only prepares food for display, does not have to register. The County Agricultural Commissioner’s Office in each county carries out CDFA’s registration. The State office in Sacramento carries out DHS’ registration.

COPA’s extracts that apply to retail operations:

As outlined in Paragraph (6) below, when a retail operation conducts processing as defined in the NOS, they must register with CDFA through the County Agricultural Commissioner’s Office.

(6) A retail store engaged in the handling or processing of organic products shall register and pay a fee of one hundred dollars (\$100) for each store location that processes organic products onsite.

The application of Paragraph (8) below for retail operations: When SKY HIGH MARKETS contracts with Ray’s Finest to package product under the label of “Sky High Markets,” then Sky High has become a manufacturer and would be required to be registered with the State as such. The NOS would not require Sky High to become certified as long as they only contract for packaging with a manufacturer that is in full compliance with the NOS. If a retail operation contracts with a private labeler and does onsite processing at the retail store, they may need dual registration to cover both activities (DHS and CDFA registration).

(8) Any person that hires any other person for custom packing or labeling shall register and pay a fee based on the total sales of product custom produced for them as outlined in the chart above. In addition to the required registration information above the person must disclose on the registration form the names of all companies that pack and process for them.

COPA record keeping requirements for California retail operations:

46028. (a) All persons who produce, handle, or retail products that are sold as organic shall keep accurate and specific records of the following as applicable:

(3) All substances applied to the crop, or post harvest wash or rinse water, or seed, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(5) (A) Invoices, bills of lading or other documents that show transfer of title of certified organic products shall indicate the product is "organic" or "certified organic" and, if applicable, the California registration number of the person transferring the product.

(B) Any person selling product that is exempt or excluded from certification under NOP rules, must follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(6) All substances applied to the product or used in or around any area where product is kept including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(7) Except when sold to the consumer, the name and address of all persons, to whom or from whom the product is sold, purchased or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction

46029. (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of product sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the secretary, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, of any record required to be kept under this section for purposes of carrying out this act. Records acquired pursuant to this act shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Verification of Paperwork

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Web Site Links.

- X Agricultural Statistics: <http://www.cdfa.ca.gov/statistics/>
- X California Department of Food and Agriculture: <http://www.cdfa.ca.gov>
- X Agricultural Issues Center: <http://aci.ucdavis.edu>
- X Integrated Pest Management Program: <http://www.ipm.ucdavis.edu>
- X Post Harvest Information: <http://postharvest.ucdavis.edu>
- X Small Farm Center: <http://www.sfc.ucdavis.edu>
- X Sustainable Ag. Research & Educ. Program: <http://www.sarep.ucdavis.edu>
- X Vegetable Research & Information center: <http://vric.ucdavis.edu>
- X Weed Research & Information Center: <http://wric.ucdavis.edu>
- X Alternative Farming Systems Information: <http://www.nal.usda.gov/afsic>
- X Agricultural Marketing Service: <http://www.ams.usda.gov/nop>
- X Organic Trade association: www.ota.com